RECENT TRUST DECISIONS AND BUSINESS

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Dissolution of several giant combinations by court decree, though perhaps the most dramatic circumstance in recent trust history, is by no means the only important one. Court decisions during the past two or three years have raised many other questions than the question of dissolution, and the record in pending litigation is still adding to the number. Besides this, important reports of the Bureau of Corporations and other branches of the government have collected and disseminated material facts previously unavailable. Finally, discussion of the question is gradually being focused around specific legislative proposals, based for the most part on assumptions concerning trust efficiency quite different from the views current at an earlier date. From all this a new stage in the evolution of the trust question is easily recognized.

Neither the time available for the preparation of this paper, nor the author's previous study of the subject justify an attempt to present significant new material. The paper, therefore, will be directed primarily toward an effort to set forth, as the author sees them, some of the current phases of the question, and if possible to suggest profitable lines of further inquiry.

Considered from the standpoint of immediate effects, the topic of the session has to do, among other things, with the possible connection between government trust activity and the present situation in business. Accepting the current belief that there is at present a depression in business of whatever degree of seriousness, how much of the situation may fairly be credited to the attitude of the government, and of this in turn what part is attributable to the activity of the Department of Justice and the courts? Unquestionably, during the past year, the prospect of tariff and currency legislation, added to the uncertainty of developments concerning trusts, have tended to postpone the inauguration of extensive new enterprises. However wholesome the ultimate effects of new legislation or decisions of the courts, it is quite obvious that, as a psychological influence, changes in the governmental situation may have a large part in bringing on a depression for which conditions are ripe. Even if we should accept

the "Wall Street push-button theory" of panics, the psychological element would be none the less present, though operating along other than the traditionally accepted lines.

To the extent that a composite view of the business mind can be secured, it seems to reveal hopefulness with respect to the currency and readiness to make adjustments to the new tariff. Indications are not lacking, however, that this attitude is based in part on an assumption that the activity of the Department of Justice with respect to trusts is to be considerably diminished.

A feeling that the Attorney General has it in his power to hale into court representatives of business enterprises covering a wide range of activity is clearly a circumstance which affects many interests other than those directly subject to attack. It is not difficult, moreover, to hear it asserted with reference to particular cases that the activity of the department of justice is or has been largely a matter of individual caprice or political hazard. In view of such inferences, the discretion exercised by the Attorney General and the manner of its exercise becomes an important factor in the discussion.

The Sherman anti-trust law, in contrast to many of the state anti-trust laws, is expressed in general terms. It declares illegal the contracting, combining, or conspiring to restrain trade or commerce among the states or with foreign nations, and the monopolizing or attempting, combining, or conspiring to monopolize any part of such trade or commerce. In deciding whether these offenses have been committed, the courts, and before them the Department of Justice, have to face essentially two questions: (1) Do the facts as they appear in the particular case show a combination which by its very existence constitutes monopoly or restraint of trade? (2) Do the facts point to conduct on the part of individuals or corporate bodies which indicates a purpose to do the things which the act enjoins?

The second sort of consideration involves not primarily the question of illegal combination, but rather the question of what constitutes unfair and illegal competition. Beginning with the Standard Oil and Tobacco cases, decisions up to the present have hinged largely on specific acts of restraint and particular methods of exercising economic power. Practices resorted to by a large industrial unit in competition with smaller units or in averting potential competition have contained the crucial points. The following are some of the specific questions, several of which are

likely to be presented to the Attorney General in a single prima facie case.

Is it permissible for manufacturers or distributors to pool their interests, and by means of lists or trade letters essentially to boycott dealers who handle outside competitive products or who violate restrictions concerning retail price? Is it legal to maintain a system of espionage on competitors? Are there any restrictions on the right of a concern to employ competitors' servants when circumstances indicate a well-defined policy of using this method to obtain competive trade secrets and to drive the competitor out of business? What are the limits of control to be exercised by the holder of a patent over the patented article and its accessories? To what extent and under what forms may the makers of brands and trade-mark goods coerce the distributors of their products? May the manufacturers of a group of commodities, some competitive and some non-competitive, compel dealers to handle exclusively their competitive products as a condition of securing the monopoly product? Is it legitimate for a large corporation to fix an unremunerative price in the territory of a local competitor when circumstances point to a purpose of eliminating the competitor from the field? May the integration of an industry be accomplished or attempted by using monopoly returns in one branch of the industry to support rate wars with the purpose of destroying competition in another branch? May controlled companies be run as independents?

It is quite clear that some one of these questions, usually several of them, have been involved in most of the recent cases passed upon by federal courts, and they clearly contain the gravamen of charges in several other cases now pending. Competitive methods are notably in the foreground in the Cash Register case, the Bathtub case, the United Shoe Machinery case, and in the Oil and Tobacco cases.

Chief Justice White, speaking for the Supreme Court, has set forth in forcible language in the Tobacco case the influence of specific acts in bringing the Court to the decision reached in that case. Using the language of the Court:

> The history of the combinations is so replete with the doing of acts which it was the obvious purpose of the statute to forbid, so demonstrative of the existence from the beginning of a purpose to acquire dominion and control of the tobacco trade, not by the mere exertion of the ordinary right to contract and to trade, but by methods devised in order to monopolize the trade by driving competitors out of business, which were ruthlessly carried out upon

the assumption that to work upon the fears or play upon the cupidity of competitors would make success possible. We say these conclusions are inevitable, not because of the vast amount of property aggregated by the combination, not because alone of the many corporations which the proof shows were united by resort to one devise or another. Again, not alone because of the dominion and control over the tobacco trade which actually exists, but because we think the conclusion of wrongful purpose and illegal combination is overwhelmingly established by the following considerations: [The opinion then proceeded to specify among other things several acts of the sort above enumerated.]

Conceding the wide discretion of the Attorney General, it may fairly be questioned whether, with due regard to his oath of office, he can in the future safely omit to take cognizance of specific acts of prima facie violation when the courts already have established the illegality of similar practices. Whenever the fact of combination is complicated by evidence of unfair and coercive methods, then at least the burden of responsibility for securing business peace must rest squarely on defendants.

Admitting the Attorney General's power in many cases to prosecute or not to prosecute, as well as the possibility that political considerations may enter into particular cases, it is doubtless still true that the enforcement of the Sherman law, in the main, has had, and still has, a patriotic and beneficial purpose.

If a diminution of activity by the Department of Justice should mean delay in clarifying the legal standards governing competition, this, from the business standpoint, could scarcely be regarded as a beneficent result. Without reference to the merits of the Administration view concerning the efficacy of competition, the serious need of a definition for fair competition is clear, —a definition which will promote rivalry based on the relative efficiency of different economic units, and eliminate rivalry based on brute force.

There is some analogy between the law of fair and unfair competition and the law of fraud. Notwithstanding border-line cases with reference to which it is impossible to say categorically that a certain procedure does or does not constitute fraud, an attorney is able to advise his client with a fair degree of assurance what constitutes a fraudulent precedure,—with reference to fraud there is a comprehensive body of law. This, though highly in the interest of business stability, is not yet the case with reference to unfair competition.

Whatever the disturbing influence of agitation the question of unfair competition ought to be settled with as little delay as

practicable. Whether it is dealt with by the legislature or by the courts, it is quite clear that it never can be settled as long as practices which the public conscience condemns are tolerated.

Dissolution of trusts presents an essentially different problem from those just considered. In the Oil and Tobacco cases the improbability of otherwise being able to terminate unfair methods explains why dissolution was ordered. Dissolution *per se* raises at once, among other things, the question of the relative efficiency of trusts considered from the long-time view and with respect to every aspect of the particular line of business concerned.

In approaching this phase of the topic it should be made clear at the outset that the discussion has to do with efficiency in the productive rather than the acquisitive sense. Productive efficiency, moreover, needs to be defined in terms broad enough to include, not only the making and distributing of goods to satisfy existing wants, but also considerations of permanent national productivity and well-being.

At the time the great industrial trusts were being formed, it was widely assumed that, whatever the dangers they might entail, they surely would be able to make and distribute goods more economically than smaller units of production. It should be noted, however, that this view met with no uniform acceptance by economists. Professor Bullock, in his article entitled "Trust Literature: Survey and Criticism,"[1] published in 1901, submitted, in a masterly analysis, reasons for skepticism concerning trust efficiency which require surprisingly little revision today.

Considering the history of trusts during the last decade, it is still worth while to introduce a discussion of their efficiency by the question, "Why were the trusts organized?" There is no doubt that the kind of competition which had obtained in many industries during the late eighties and nineties had been exceedingly wasteful and destructive. On the other hand, court records, government reports, and a mass of other public data make it hardly necessary to point out that producing and distributing efficiency was largely an afterthought in connection with trust formation. It appears quite obvious that the two impelling forces—one or both of which really explain the launching of the great industrial trusts—were *market control* and the *profits of organization.*

[1] *Quart. Jour. Econ.*, vol. XV, Feb. 1901. Reprinted in Ripley, W. Z., *Trusts, Pools and Corporations.*

The security market at the beginning of the present century, the corporation law of New Jersey, and knowledge in the use of cut-throat competition were circumstances peculiarly favorable to the pursuit of these objects. Returns in the form of promoters' and syndicate managers' profits to be secured from the creation and flotation of new securities were an all-sufficient incentive for bringing enterprises together and organizing them into a trust. Inasmuch as securities based on hopes which in turn were based on prospective market control could easily be marketed, it was possible to pay prices for good plants which no former earning power would have justified and to bring other plants into subjection. Immediate incentive in some cases, compulsion in other cases, was sufficient to bring about a sale, the terms of which bore but secondary relation to past or future earnings from operation.

Admitting that the situation just described gave most of the trusts at the start a handicap of heavy obligations and expensive and inefficient plants, the real question today is, "Have they made good since that time?" What criteria are available by which their efficiency can be ascertained?

For the steel trust the Bureau of Corporations has made an approach to the question of efficiency through an analysis of costs. The significance of these figures is disputed, but so far as I am aware no specific criticism of them has been put forth in such a way as to contain affirmative evidence of superior efficiency.

The Bureau report shows also what is well known, that the steel trust during the period of its existence has been able to put market value under a large part of the water in its original capitalization. Obviously, other factors than the economical production of steel influence this showing. There are no figures which would justify an attempt to evaluate these other factors, but control of ore and market control have figured largely.

With reference to ore, some of the control has now been relinquished, but for the period as a whole the ore position has been a strong asset. If it were possible to conceive a government policy which regarded ore deposits as public property to be utilized and developed exclusively for the general welfare, would the corporation have been able to occupy such a favorable position? The difficulty of a categorical answer to such a question does not make it the less a fair one.

With reference to market control, there are conditions under

which this might enhance productive efficiency in the national sense, notably if it prevented reckless overproduction or cut-throat competition,—what is called demoralization of trade. One of the acts of the Steel Corporation concerning which there is a large weight of favorable opinion is its policy of maintaining prices just after the panic of 1907. If comparison were made with an earlier period of recurring pools followed by reckless competition, when steel was spoken of as intermittently "prince" or "pauper," it might be argued that market stability in iron and steel could be accomplished only through the trust.

Business men in and out of trusts unquestionably are coming to feel that price maintenance with reference to certain aspects of trade is a highly desirable policy. While, from the public standpoint, there clearly are indications that this form of coöperation, even in the absence of a formal pool, frequently goes far beyond legitimate market needs, it probably will be found desirable in working out future policy with respect to competition to permit open—not secret—price maintenance under proper restrictions when situations so demand. The very fact, however, that men are coming more and more to this view, raises serious question whether, even in iron and steel, either a trust or a pool will be necessary in the future to accomplish the needed result.

The action with respect to steel prices after 1907 represents, of course, merely a "standing pat" on permanent policy. The serious questions surrounding this policy when regarded as permanent and the disquieting rumor that the policy narrowly escaped abandonment at the very time the public occasion for its maintenance arose create grave doubt whether in general, or in emergencies like 1907, a trust in the long run will prove the safest conservator of business stability.

Admitting, without prejudice to opposite contention, some merit in a policy of price maintenance, its success in the case of steel would seem to rest on factors which have little to do with corporation efficiency. The tariff has continued, up to the present year, to protect from foreign competition; overlapping ownership with railroads, the largest purchasers of steel, has created in some measure community of interest between buyers and sellers scarcely favorable to price depression; most important of all, the period during which the steel trust has been in operation has been one peculiarly of unprecedented demand for steel products,—a demand

which only roughly could have been anticipated at the time the United States Steel Corporation was organized.

Concluding this line of argument, if we accept that the advance in steel securities is due to the control of ore and control of market, and if it can be shown that the success of these policies, whatever their merit or demerit on public grounds, is not necessarily related to any economies in making and distributing steel, it becomes quite clear that advance in securities shows nothing concerning the relative efficiency of the trust.

There are other figures and other ways in which they might be connected with the general subject of efficiency, but it may seriously be questioned whether there are any figures available from which affirmative mathematical evidence of the steel trust's superior efficiency could be shown.

The factors to be considered in other industries obviously would not be exactly the same as for steel. In a so-called horizontal combination made up merely of similar plants the situation would be less complex. It is perhaps clear that the study of each sort of business presents its own difficulties and that conclusions concerning efficiency must be, in every case, specific rather than general. This, however, merely emphasizes the complicated nature of the general problem and the necessity of further specification before any assumptions of superior efficiency can be accepted.

Among the chief economies of combination which are set forth in general terms are the better utilization of men, machines, and materials, saving from by-products, comparison of methods and results in different plants, eliminating sales costs, facilities in pushing foreign trade. Some of these items are perhaps not capable of representation in comparative cost sheets, but some of them which are such, for example sales costs of farm machinery, do not appear as economies in those combinations where they would naturally be expected.

All of the above items are so obviously conditioned by the nature of the particular business, that, except as discussion is based on a cost showing of individual concerns, very little progress can be made by discussing them in general terms. In connection with all of them, however, it is plain that the protagonists of combination still fail to distinguish between combination and large-scale business as much as they did a dozen years ago when

Professor Bullock, in the article above cited, criticized them on this ground. It has scarcely been shown that the theoretical advantages of trusts, except those which raise negative presumptions on grounds of public policy, might not have been secured by much smaller units.

Quite obviously, business in this country is likely to be carried on in the future, to a great extent, in large units; but this is by no means equivalent to asserting that the trust form of organization will be a dominant factor. Both economic theory and practical experience in production have established the law of diminishing returns with respect to plant size. When, however, the point of maximum plant productivity has been reached, it may be possible to combine ten plants into a single organization and still achieve notable economies with respect to the distribution of product. Economies of a legitimate sort in the business or financial organization of a concern may also be realized by such combination.

Accepting, however, the distinction between plant efficiency and corporation efficiency, is it reasonable to suppose that combination of plants can go on indefinitely without experiencing disadvantages similar to those which appear with increase in the size of plant; or, if this is true, does it necessarily indicate that there would still be a balance of advantage from the integration of a whole industry by bringing together allied and subsidiary enterprises in a consolidated concern?

The testimony of persons whose familiarity with industrial organization merits respect indicates that when combination is carried too far there are dangers, at least, of an administrative nature which might be grouped under the two heads of *cumbersomeness* and *stagnation.* One line of theoretical argument against monopoly combinations which, so far as I am aware, has never been adequately answered, is the contention that an assured monopoly control in an industry will inevitably discourage enterprise.

In the tobacco industry there is now evidence of active competition along certain lines. The testimony of a person who perhaps more than any other is familiar with details of organization in that industry indicates that the younger men in the different organizations regard dissolution distinctly with favor. They find they are nearer the center of things and that therefore their enterprise and individual efficiency meets with greater re-

sponse.[2] Is this perhaps a side light on the argument that trusts engender stagnation?

A detailed history of inventions, with a parallel record of those to be credited respectively to trusts and to independents in the same line of trade, would be of interest in this connection; or, again, a comparison with foreign countries where the same industries have not been directly affected by trusts. While it is easy to point to significant contributions of particular trusts along the line of invention, there is a widespread belief that the trusts tend to stifle the utilization of new inventions and processes. Obviously the showing in this regard for the short period under consideration would prove nothing with reference to the permanent influence of combinations.

As to the charge of cumbersomeness, there are here and there indications that, even in the absence of government activity, some of the trusts are trying to readjust their business in such a way as to break up organization and operating control into smaller units. One of the reasons given on creditable testimony for the lack of disturbance in the oil and tobacco industries as result of dissolution, was that disintegration proceeded along lines already contemplated by those organizations in the interest of greater efficiency.[3]

Uniformity in corporation law; a greater responsibility to stockholders on the part of corporation officers and directors; regulation of transactions in which men as promoters and syndicate managers do business with themselves as the officers of corporations; elimination of unfair competition;—these are reforms

[2] On the other side, it is to be noted that one effect of dissolution has been to necessitate enormous expenditure for building up a demand for paying brands, —this due to the fact that by the dissolution proceedings some of the companies were left without such brands.

[3] Some writers have emphasized, as does Professor Bullock (*loc. cit.*, p. 199), the extraordinary legal and organization expenses which combinations incur. He speaks of the "cost of employing the most skilled legal talent to steer the combination just close enough to the law;" also of the "expenses necessary for 'legislative' and 'educational' purposes and the outlays for stifling competition or the continual 'buying out' of would-be rivals." If coercive methods and unfair competition are separately considered as above, it is scarcely permissible, in considering relative productivity, to feature too strongly handicaps of this sort. When we contend for the elimination of all combination advantages to which negative presumptions attach on grounds of public policy, we must also be ready to eliminate possible disadvantages which would disappear were the practices of combinations made to conform to the public good.

admittedly long overdue. Without necessarily agreeing with those who contend that the timely enactment of these measures would have prevented the trust movement, it is still reasonable to maintain that in the absence of other causes than efficiency trusts could not have reached anything like their present strength.

Conceding that the superior efficiency of combinations has not been established, what are the prospects that our present knowledge could, within a reasonable period of time, be so supplemented by further investigation as substantially to increase the assurance with which the subject could be handled?

Existing reports of the Bureau of Corporations have given us an enormous mass of information concerning trusts. Their great contribution in outlining and forecasting methods of investigation is universally recognized. It is still clear, however, that the inquiries of the Bureau have one great drawback. If the same ability and training which have gone into these reports could have been organized in such a way as to command an authority like that of the Interstate Commerce Commission, the influence of the reports on the trust situation would have been tremendously enhanced.

The actual carrying out of inquiries, as well as the later phases of their organization, has usually been under the supervision of some one person. This is a normal procedure, and while apparently it has not discouraged the coöperation of the whole Bureau force in developing scientific methods of approach, it has, however, tended to identify each of the reports with an individual. Rightly or wrongly, interested persons have felt that they could safely question specific findings, provided they were able to give plausible reasons for their objections. The complexity of subject matter is well calculated to confuse persons whose interest does not bring them in direct contact with the facts. All of these circumstances makes it desirable that the government body which carries on investigation of this sort should, by its formal organization and the dignity of its position, command the greatest possible authority not only with students but with the general public.

The Commissioner of Corporations has proposed a further inquiry into trust efficiency. Is this practicable on general principles? and if so, has the Commissioner at his disposal, or is he likely to have, the instrumentalities by which a comprehensive study of efficiency could be undertaken? It is not within the province of this paper to outline the scope and method of such

an investigation. Obviously, there would be much greater difficulty in providing for the inquiry a basis of uniform, or at least standard, accounts than has confronted the Interstate Commerce Commission in prescribing uniform accounting for the railroads. However, if some board or trade commission, occupying a position in the public esteem like that of the Interstate Commerce Commission, were to lay down the lines which an inquiry should take and prescribe its methods, the results, as far as they went, would command general acceptance.

Even a temporary commission *ad hoc*, if the training and personality of its members carried weight, might obtain a similar result. Under such conditions, it seems reasonable to suppose that an investigation might be carried on which would supplement existing reports, cover industries not yet investigated, and add materially to our knowledge of trust efficiency. The value of a comprehensive study undertaken now would be enhanced by the fact that some of the dissolved trusts could figure in any comparison made. Considering the magnitude of such a study there is ground for skepticism whether Congress would readily appropriate sufficient funds. It is also doubtful whether the work could be completed within the limits of a single Presidential term.

Less comprehensive inquiries by the Bureau unaided, if the reports were individually well managed, would be valuable, as past reports have been, but it is not to be expected that they would result in any epoch-making addition to our knowledge of trust efficiency.

If the whole truth could be revealed it probably would show for each industry investigated some items in which the advantage would be on the side of trusts, while in others combination would mean loss. The extent to which such items could be shown in balanced parallel columns would vary both with the industry and the specific items. Obviously, no inquiry would lead to uniformity of net results for different industries.

We already have come to accept monopoly as the normal and economical condition in the so-called public service enterprises. None of the arguments against trust efficiency have tended seriously to undermine this assumption. If it is true that some industries can advantageously be carried on as complete monopolies, others in very large units, and still others in smaller units, investigation, if it has the effect of moderating the policy of dissolution pending further knowledge, may possibly serve to prevent the

breaking up of combinations which are economically and politically justified. Obviously, it is no inconsistency to look with favor on an effort to dissolve a combination like the tobacco trust and at the same time to be extremely skeptical about the result of dissolving the so-called telephone and telegraph trust.

In introducing the discussion of efficiency, emphasis was laid on the necessity of considering efficiency in the productive, rather than the acquisitive, sense; also upon the necessity of defining productive efficiency with reference to permanent national productivity and well-being. The most cursory consideration of a highly integrated industry like iron and steel, in which trust influence is carried through every intermediate process from raw material to a great variety of finished products, reveals such stupendous problems affecting both resources and men that the efficiency of the trust at every turn is interwoven with questions of public policy. Other trusts, perhaps in less measure, present a similar situation.

Relative efficiency, then, can only partially be revealed by any sort of formal investigation; if it were revealed there would still remain questions of law and policy upon which, in the last analysis, the perpetuation or dissolution of particular trusts must ultimately hinge. While the distinctions between questions of trust methods and the question of combination *per se* is necessary for clear thinking, trust practices, historically and potentially, are so interwoven with the fact of bigness that the trust problem from the government policy standpoint is and will remain one problem.

From this it results that the benefits to accrue from further inquiry into trust efficiency would come primarily in the way of a more illuminating publicity and in laying the foundation for the permanent work of an industrial or trade commission rather than in any service they might render in forming the basis for dissolution proceedings.

Up to this point the possibility of dissolving combinations has been assumed. Before the Oil and the Tobacco decisions, this possibility was by no means admitted, and in one of these cases, at least, it seems apparent that control has not been successfully dissipated. Without attempting to argue the physical possibility of dissolution, knowledge of the procedure in the Tobacco case and in subsequent cases leaves little doubt that dissolution *per se* is entirely practicable. There is still doubt whether dis-

sipation of financial control can immediately be accomplished by court action. Precautions against coercive control similar to those taken in the Tobacco case can be devised, however, in such a way that with the lapse of time the tendency will be in the direction of competition.[4] From this standpoint the present active competition in the tobacco industry is encouraging. No thoughtful person will expect that the exact condition which preceded combination will be restored.

As this paper has tried to proceed from the standpoint of business welfare, one further question should perhaps be raised. Granted that the breaking up of trusts is intrinsically desirable, may not the disturbance to business from repeated dissolutions be so great as to over-balance possible advantages? The extreme care shown by the courts up to this time, and the action of some of the trusts in hastening to dissolve themselves, are calculated to allay fear of this sort. Such developments as those in the oil and tobacco industries prior to dissolution, and those which appear to be under way in some other industries at the present time, indicate perhaps that dissolution is along the line of present economic development. If the actual execution of the work can be placed in the hands of an efficient trade commission, it does not seem probable that the danger of disturbance to business need figure largely in the policy to be pursued.

To summarize a discussion which deals so largely with unanswered questions is exceedingly difficult. Concerning the efficiency of trusts, the meagerness of specific proof of economies claimed, the entire absence for any trust of anything like a balance of advantages against disadvantages, the continued reliance on hypothetical benefits,—these have made the trusts peculiarly vulnerable to the persistent and well organized challenge of their economic justification by the administration now in power. It may safely be assumed that from the efficiency standpoint the burden of proof has shifted to the trusts. There are no facts which would justify a careful student in regarding the efforts to dissolve trusts as an economic calamity. The Sherman law, which so often in the past has been hailed as a monument of political folly, is clearly attaining a more respectable place in public esteem.

[4] For a description of these precautionary measures, see Muhse, A. C., "The Disintegration of the Tobacco Trust," *Political Science Quarterly,* June 1913; also Stevens, W. M., *Industrial Combinations and Trusts,* New York, 1913, pp. 440-461.

Leaving the question of efficiency out of account, it is possible to set forth certain definite favorable results of government trust activity. In the first place, the trust movement has been subjected to a large amount of publicity, the net result of which has been to break the spell of the trusts in the public mind. This publicity has made us realize for one thing that the bureaucracy of capital may be as dangerous to national productivity and progress as a bureaucracy of public officials. It has also created a demand for still more illuminating publicity which, in the long run, is bound to have a wholesome effect.

The carrying through of the Tobacco and Oil cases, whatever we may think of the ultimate disposition of those cases, has created a reasonable ground for assurance that the Government may proceed with any trust policy which is finally considered wise, without being embarrassed by a feeling of impotence.

Perhaps the greatest of all the specific services to business which the Sherman anti-trust law and the decisions under it have rendered is found in the progress toward a definition of legitimate competition. This has given an effectual impetus to efforts directed toward raising the moral level upon which competition and all the business of the nation in the future will be carried on.

The present situation is one in which the government is unquestionably in the possession of tremendous power, for the use of which there are comparatively few effective legal checks. The intimate and growing connection between government and business seems destined, moreover, to give any administration greater and greater power to influence by its policy the course of business affairs. In such a situation business welfare is bound to depend, in many instances, upon political responsibility and the character of officers rather than upon concrete legal restraints.

Whatever the momentary disturbance accompanying the trust activity of government during recent years, the signs of growing recognition of public responsibility on the part of great business enterprises more than compensates for any drawbacks which the details of the situation may have brought. Without falling prey to over-sentimental optimism one can still maintain that the co-operation for public ends which such a recognition implies will, in the long run, make for the continued development and prosperity of wholesome business.